

## MINUTES OF JULY 7, 2003

The regular meeting of the Sussex County Board of Adjustment was held Monday evening July 7, 2003, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Mills, Mr. Workman and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mr. Oates and Mrs. Heffelfinger – Zoning Inspectors II, and Mrs. Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to approve the Revised Agenda with the correction to hear Case No. 8230 Carl M. Freeman Communities before Case No. 8229 Carl M. Freeman Communities. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of June 16, 2003. Vote carried 5 – 0.

Mr. Berl read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

**Case No. 8225 – D. Jeffery Karr and Marcie Manuszak** – north of Road 322, 1,610 feet west of Road 432.

A variance from the minimum lot size requirement, a variance from the minimum lot width requirement, a variance from the side yard setback requirement, a variance from the front yard setback requirement for a through lot, and a special use exception to retain a manufactured home on a parcel.

Mr. Oates presented the case. D. Jeffrey Karr, Marcie Manuszak, and Olive Karr were sworn in and testified requesting a 0.445-acre variance from the required 0.75-acre lot size requirement, a 50.17-foot variance from the required 150-foot lot width requirement, an 8.9-foot variance from the required 15-foot side yard setback requirement for a dwelling, a 6.5-foot variance from the 15-foot side yard setback requirement a shed, a 24.7-foot variance from the required 30-foot front yard setback requirement for sheds, and a special use exception to retain a manufactured home on less than a five (5) acre parcel; that they want to subdivide the property; that the manufactured homes have been on the property for over 10 years; and that the manufactured homes will meet the setbacks after the property is subdivided.

By a show of hands, 1 party appeared in favor of the application.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances and special use exception be **granted**. Vote carried 5 – 0.



**Case No. 8226 – Rehoboth Mall Limited Partnership** – southeast of Route 24, 1,385 feet southwest of Route One, Rehoboth Mall West.

A special use exception to allow for joint use of parking.

Mr. Oates presented the case. John Sergovic, Attorney, on behalf of the application, requesting a special use exception to allow 100% joint use of parking for a nightclub and for retail stores; that the existing parking can accommodate both uses; that the retail use is from 10:00 a.m. to 9:00 p.m.; that the nightclub use will be from 9:00 p.m. until; that any new parking spaces created would never be used do to the distance from the mall; that no new entrances will be created; and that there will be no expansion to the building.

Mr. Oates stated that the office received 1 letter of opposition to the application.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted**. Vote carried 5 – 0.

**Case No. 8227 – John and Peggy Hickman** – northeast of Route One, being Lot 1, within Midway Park Subdivision.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Peggy Hickman was sworn in and testified requesting a 16-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that she purchased the property 3 years ago; that the previous unit was destroyed by water damage; that the new unit does not extend further into the setback than the previous unit; and that she obtained all of the proper permits.

Mr. Oates stated that the office received 2 letters in opposition to the application.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

**Case No. 8228 – James and Elaine Jankowich** – south of Route 54, 700 feet west of Route 20.

A variance from the side yard and rear yard setback requirements.

Mr. Oates presented the case. James Jankowich was sworn in and testified requesting a 10-foot variance from the required 20-foot rear yard setback requirement and a 10-foot variance from the required 15-foot side yard setback requirement for a detached garage; that the proposed detached garage will measure 24' x 30'; that he wants to block his view of his neighbors fence; and that he submitted pictures.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variances be **granted**. Vote carried 5 – 0.

(17.01)  
**Case No. 8230 – Carl M. Freeman Communities** – north of Route 54 and west of Route 20, being Lot 3 within Americana Bayside Development.

A special use exception to place a manufactured home type structure for a sales office.

Mr. Oates presented the case. Steven W. Smith was sworn in with Jim Fuqua, Attorney, on behalf of the application, testified requesting a special use exception to place a manufactured home type structure for a sales office; that the MR Zoning permits the use of a temporary sales structure; that the unit will be landscaped and have ample parking; that the hours of operation will be a regular business day schedule; that the use will be needed for approximately 3 years; and that the sales facility will be moved to a model unit in the future.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of 3 years**. Vote carried 5 – 0.

(16)  
**Case No. 8229 – Carl M. Freeman Communities** – south of Route 54, 700 feet west of Route 20.

A special use exception for storage of construction trailers and a manufactured home type structure for a sales office.

Mr. Oates presented the case. Steven Smith was sworn in with Jim Fuqua, Attorney, on behalf of the application, testified requesting a special use to store four (4)



construction trailers and a special use for a manufactured home type structure for a sales office; that the request for the manufactured home type structure for a sales office is no longer needed due to the approval of Case No. 8230, Carl M. Freeman Communities; that the construction trailers are owned by the Applicant; that the trailers will be moved to the construction project proposed to begin in November 2003; that the trailers will be placed at the entrance of the proposed site; and that the use is only needed for a six month period.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of six (6) months**. Vote carried 5 – 0.

**Case No. 8231 – Theda T. Cosbey** – south of Road 483, 3,800 feet west of Road 484.

A variance from the side yard and rear yard setback requirements for a poultry house.

Mr. Oates presented the case. Theda T. Cosbey Brittingham was sworn in and testified requesting a 45-foot variance from the required 50-foot side yard setback requirement and a 45-foot variance from the required 50-foot rear yard setback requirement for a poultry house; that the poultry house will meet the 200-foot setback requirement from a neighboring dwelling; and that the Applicant owns the adjacent parcel.

By a show of hands, 1 party appeared in favor of the application.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variances be **granted**. Vote carried 5 – 0.

**Case No. 8232 – Edward and Dale Leyden** – southwest of Road 326, .7 mile northwest of Road 432.

A special use exception to operate a bed and breakfast facility.

Mr. Oates presented the case. Edward and Dale Leyden were sworn in and testified requesting a special use exception to operate a bed and breakfast facility; that the existing dwelling has 3 bedrooms; that 2 bedrooms will be available for rent; that they

may expand the facility in the future; that the parcel is 2.5 acres and has ample parking; and that they submitted pictures.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted**. Vote carried 5 – 0.

**Case No. 8233 – Mark Slaughter** – north of Route One, south corner of Road 272.

A variance from the front yard setback requirement and a variance from the minimum front yard setback for sales display.

Mr. Oates presented the case. Mark Slaughter was sworn in with Jim Fuqua, Attorney, on behalf of the application and testified requesting a 24-foot variance from the 40-foot front yard setback requirement, a 12-foot variance from the required 40-foot front yard setback requirement for an awning and a 0.25-foot variance from the required 25-foot setback requirement for an auto display; that the Applicant is moving his business to the above referenced property; that he is renovating the existing gas station for his auto sales business; that the awning will be used to provide protection to his cars; that the awning will not obstruct vision or alter the character of the neighborhood; that there will be curbing installed to prevent the display vehicles from being placed any further into the setback; that the existing entrances will remain; and that pictures were submitted.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted**. Vote carried 5 – 0.

**Case No. 8234 – Charles and Margaret Holcombe and Judith Starks** – south of Route 54, east of Madison Avenue, being Lot 9 within Edgewater Estates Development.

A variance from the side yard and rear yard setback requirements.

Mr. Oates presented the case. James Westerberg was sworn in and testified requesting a 3.4-foot variance from the required 10-foot side yard setback requirement, a 0.3-foot variance from the required 10-foot side yard setback requirement for a deck and a 2.4-foot variance from the required 20-foot rear yard setback requirement for a covered deck; that he built the decks and is 1/8 owner of the dwelling; that he misinterpreted the



rules of the ordinance pertaining to the setbacks for decks; that his is the first time that he has built anything in Sussex County; and that he apologizes for his mistake.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances be **granted**. Vote carried 5 – 0.

**Case No. 8235 - R. Earl Taylor, Jr.** – east of Route 54, south of Pine Street, being Lot A1 within Keen Wik Development.

A variance from the side yard setback requirement.

Mr. Oates presented the case. R. Earl Taylor, Jr. was sworn in with Mary Schrider, Attorney, on behalf of the application and testified requesting a 2.6-foot variance from the required 10-foot side yard setback requirement for an existing garage; that they believe the dwelling was built over 30-years ago; that the Applicant applied for the variance as soon as he became aware of the violation; that he is prepared to remove the improvement if the case is denied; that the neighbors are in favor of the application; and that a survey was submitted.

Mr. Oates stated that numerous variances have been granted within this subdivision.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

**Case No. 8236 – Obrecht Phieonix** – east of U.S. Route 13, north corner of Route 404.

A variance from the maximum allowable wall signs.

Mr. Oates presented the case. John Stapowski and Chris Pelane was sworn in and testified requesting a variance for 7 additional wall signs; that the additional signs measure 140-square-foot; that the Royal Farms store has road frontage on all four sides; that the building measures 50' x 100'; that the entire store will have less than 7% signage; that the signs are standard uniform Royal Farms signage; and that all signs will be illuminated.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

**Case No. 8237 – Christian and Barbra Willey** – south of Road 620, 1,139 feet east of Route 36.

A special use exception to place a manufactured home type structure for an office and storage.

Mr. Oates presented the case. Christian and Barbra Willey were sworn in and testified requesting a special use exception to place a manufactured home for an office and storage use; that he would like to move his office out of his dwelling; that he owns an electrical contracting business; that the unit will measure 14' x 50'; that he would like to use the unit for 7 to 8 years; that the unit will be connected to a septic system; and that a drawing was submitted.

Mr. Berl stated that the Board can only approve the special use exception for a period of 5 years.

The Applicant stated that five years would be acceptable for him.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously to take the case under advisement. Vote carried 5 – 0.

At the conclusion of the hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of five (5) years**. Vote carried 5 – 0.

**Case No. 8238 – Ismet Bulut** – north of road 270A, west of Shady Ridge Drive, being Lot 29 within Shady Ridge Development.

A variance from the front yard setback requirement.

Mr. Oates presented the case. John Yling was sworn in and testified requesting a 10-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling; that the lot is currently vacant; that without the variance the dwelling would have to be set into the wetland area; that the property drops off dramatically from the road; that the attached garage will actually be the only section of the dwelling to encroach into the setback; and that a similar variance was approved on Lot 28.



Suzanne Fuller, was sworn in and testified in opposition to the application; that she represented the community; that the community is concerned about safety and the wildlife in the area; and that they have been opposed to the previous requested variances.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

**Case No. 8239 – Frank J. Murray, III** – north of Route 22, west of Harbor Road, being Lot 16 within Malone's Bayside Mobile Home Park.

A variance from the separation requirement between units in a mobile home park and a variance from the side yard setback requirement.

Mr. Oates presented the case. Frank J. Murray, III was sworn in and testified requesting a 7-foot variance from the required 20-foot separation requirement between units in a mobile home park, a 7-foot variance from the required 10-foot side yard setback requirement and a 7-foot variance from the required 10-foot side yard setback requirement for a manufactured home; that the unit measures 24' x 44'; that Atlantis Homes obtained the permit; that the placement of the unit was approved by the park; and that the Zoning Inspector informed him of the violation.

Mario Malone was sworn in and testified in favor of the application; that he is the park owner; and that the park has only a 5-foot setback requirement from all lot lines.

Motion by Mills, seconded by Mr. Hudson, and carried unanimously that the case be **left open for the Applicant to submit a survey**. Vote carried 5 – 0.

**Case No. 8240 – Paul Blinkhorn** – south of Baltimore Street, being Lot 24 and part of Lot 23 within Bayview Park Development.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Paul Blinkhorn and James Grill were sworn in with John Sergovic, Attorney, on behalf of the application, testified requesting a 13-foot variance from the required 30-foot front yard setback requirement for a new second floor deck; that the construction started prior to the ordinance change that references building straight up on a non-conforming structure; that the community was developed prior to zoning; that the community considered the bayside of the lots to be the front yard; that in



November 2000 the only restriction they needed to consider was the 42-foot height requirement; that in June 2001 plans were submitted to obtain a building permit; that in July 2001 the building permit was obtained; that in February 2002 they received a violation from Planning & Zoning due to the change in the ordinance; that it would be a great expense to move the deck in compliance; that the deck does not obstruct any of the neighbors view of the Bay; that by their interpretation of the ordinance the requested variance needed is only 2 3/8 inches; and that they submitted letters from neighbors in favor of the application and pictures.

John Hendrickson was sworn in and testified in opposition to the application; that he is the president of the Board of Directors; that he questions whether or not the variance is for 5-foot or just 2-inches; that he does not see how a decision can be made without knowing the exact height of the deck; that by granting a larger variance it can set a precedent for other variances in the community; and that no hardship will be created by not granting the variance.

In rebuttal, John Sergovic, read from the Zoning ordinance section 115-89H and submitted a copy of the elevation certificate.

Mr. Oates stated that the office received 14 letters in favor of the application.

By a show hands, 2 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **left open for further discussion with Mr. Berl**. Vote carried 5 – 0.

### OLD BUSINESS

**Case No. 8208 – D. Blake Thompson** – north of Shady Ridge Drive, 900 feet west of Road 270A, being Lots 25, 26, and 27 within Shady Ridge Subdivision.

A variance from the front yard setback requirement.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

**Case No. 8211 – Lawrence and Nancy Odette** – east of Route One, 526.88 feet north of Fifth Street.

A variance from the side yard setback requirement.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted with the stipulation that no further encroachment will be allowed.** Vote carried 5 – 0.

### **ELECTION OF OFFICERS**

Mr. Oates, Planning and Zoning Inspector, came into the meeting to supervise the Election.

Mr. Oates opened the nominations for Chairman.

Motion was made by Mr. Mills and seconded by Mr. Hudson to nominate Mr. Callaway as Chairman.

There as a consensus that the nominations for Chairman be closed.

Nominations for Chairman were closed.

Motion was adopted to nominate Mr. Callaway as Chairman; 5 yea

Vote by roll call:

Mr. McCabe	-	yea
Mr. Workman	-	yea
Mr. Hudson	-	yea
Mr. Mills	-	yea
Mr. Callaway	-	yea

Mr. Oates opened nominations for Vice Chairman.

Motion was made by Mr. Mills and seconded by Mr. Hudson to nominate Mr. McCabe for Vice Chairman.

There was a consensus that the nominations for Vice Chairman be closed.



Motion was adopted to nominate Mr. McCabe as Vice Chairman; 5 yea

Vote by roll call:

Mr. Hudson	-	yea
Mr. Workman	-	yea
Mr. Mills	-	yea
Mr. Callaway	-	yea
Mr. McCabe	-	yea

The meeting was turned over to Mr. Callaway, the new Chairman.

Motion was made by Mr. McCabe and seconded by Mr. Hudson to appoint Mr. Oates as secretary. Vote carried 5 – 0.

Motion was made by Mr. Mills seconded by Mr. Workman to dress casual for all summer meetings. Vote carried 5 – 0.

**Meeting Adjourned 9:45 p.m.**